

12/6/05

*(s)*UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\*\*\*\*\*

WILLIAM IRVING,  
Plaintiff

v.

C. A. No. 05-10054-EFH

7-ELEVEN, INC., and THE  
SOUTHLAND CORPORATION,  
Defendants

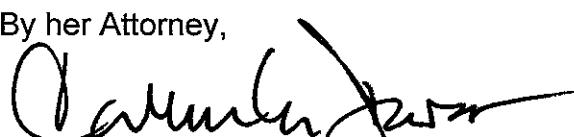
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**MOTION TO SUBSTITUTE PLAINTIFF AND  
FOR LEAVE TO AMEND COMPLAINT**

Pursuant to the Suggestion of Death upon the Record under F.R.C.P. 25(a)(1), filed herein on August 12, 2005, Patricia A. Fenton, Executrix of the Estate of William Irving, moves that she be substituted as the plaintiff in this action, and further moves for leave to amend the Complaint herein, by substituting herself for William Irving as plaintiff. A copy of the Decree of Appointment, dated November 25, 2005, and the proposed Amended Complaint, are annexed hereto.

*12-6-05**Motions allowed*  
*Edward F. Harrington, S.D.J.*

By her Attorney,



CARMEN L. DURSO, ESQUIRE  
B.B.O. # 139340  
100 Summer Street, Suite 3232  
Boston, MA 02110-2104  
617-728-9123  
November 30, 2005

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

I hereby certify that I have conferred with opposing counsel, on November 30, 2005, prior to filing this Motion, in a good faith effort to resolve the issue presented herein.



CARMEN L. DURSO

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by mail and FAX, on November 30, 2005.



CARMEN L. DURSO

Middlesex Division

## Commonwealth of Massachusetts

The Trial Court

Probate and Family Court Department

Docket No. 05P99/8P1

E 3

## Probate of Will With/Without Sureties

Name of Decedent William E. Irving

Domicile at Death 69 Butters Row  
(street and no.)

Wilmington, MA

(city or town)

Middlesex 01887  
(county)

Date of Death July 22, 2005

Name and address of Petitioner(s) Patricia A. Fenton - 69 Butters Row Wilmington, Massachusetts 01887

Status \_\_\_\_\_

Heirs at law or next of kin of deceased including surviving spouse:

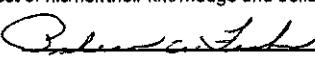
Name Residence Relationship  
(minors and incompetents must be so designated)

SEE ATTACHED LIST

EXH. 5.1 A.

That said deceased left a will-and codicil(s) -herewith presented, wherein your petitioner(s) is/are named  
executrix and wherein the testator had requested that your petitioner(s) be exempt from giving surety on  
his/her/their bond(s). The petitioner(s) hereby certif \_\_\_\_\_ that a copy of this document, along with a copy of the decedent's  
death certificate has been sent by certified mail to the Division of Medical Assistance, P.O. Box 15205,  
Worcester, Massachusetts 01615-9906.Wherefore your petitioner(s) pray(s) that said will-and codicil(s)-may be proved and allowed, and that  
he/she/they be appointed executrix thereof, with/without surety on his/her/their bond(s) and certif ies under the  
penalties of perjury that the statements herein contained are true to the best of his/her/their knowledge and belief.

Date August 29, 2005

Signature(s) 

The undersigned hereby assent to the foregoing petition and to the allowance of the will without testimony.

## DECREE

All persons interested having been notified in accordance with the law or having assented and no objections  
being made thereto, it is decreed that said instrument(s) be approved and allowed as the last will and testament  
of said deceased, and that said petitioner(s): *Patricia Fenton*  
of *Wilmington in the County of Middlesex*  
and \_\_\_\_\_ of \_\_\_\_\_be appointed  
executrix thereof, first giving bond with *out* sureties for the due performance of said trust.

Date OCT 31 2005

*Edward F. Donnelly, Jr.*

Justice of the Probate and Family Court

mcpfc - c.g.f.

NOV 25 2005

DATED \_\_\_\_\_

I, the undersigned HEREBY CERTIFY that I am the Register of the Probate and  
Family Court in the County of Middlesex, such that I have Custody of the records  
of said Court, and I further Certify that the foregoing is a photographic copy  
of the decree of appointment of the fiduciary, that said fiduciary has given bond  
as required by the law and that said appointment remains in full force.Witness, by my hand and seal of the Probate Court of the Commonwealth of  
Massachusetts, in Cambridge.*John R. Giacomo*

REGISTER OF PROBATE

*Exhibit*

NAME OF DECEDENT: William E. Irving

Docket No. 05R3918 EP/**Heirs at law or next of kin of deceased including surviving spouse:**

Name	Residence	Relationship
Michelle L. Fenton-Irving	69 Butters Row, Wilmington MA 01887	Wife
Candace C. Irving (Minor)	26 Parker Street, Wilmington, Ma 01887	Daughter
Keith W. Irving	26 Parker Street, Wilmington, Ma 01887	Son
Kevin W. Irving (Address Unknown)	<i>Last known Address Merrimack, NH</i>	Son
Nancy Irving	16 Forrest Street, Lowell, MA 01851	Step- Mother
Nelson Irving	16 Forrest Street, Lowell, MA 01851	Father
Betty (Irving) Shack	6650 NW CR 347, Chiefland, FL 32626	(Biological) Mother
Steven W. Irving	44 Montvale Ave. Apt #301 Woburn, MA 01880	Brother
Gary N. Irving	5 Bretton Drive, Merrimack, NH 03054	Brother
Bruce A. Irving	40 Lamplighter Lane, Chelmsford, MA 01863	Brother
Glenn S. Irving	18 Forrest Street, Lowell, MA 01851	Brother
Jay C Viselli	50 Riverview Apt #4 Pittsfield, MA 01851	Step- Brother
William Shack	417 Rt 135 #2 Monmouth, ME 04259	Half-Brother